

MAR 22 2006

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Robert E. Burgmeier, Richard Goodin, Joseph Delaney Jr.
Application No.:	10/822581
Filed:	April 12, 2004
For:	Adhesion Technique for Incompatible Polymers Using Modified Polymer Tie Layers
Examiner:	Thao T. Tran
Group Art Unit:	1772
Firm Docket No.:	S63.2B-10865-US01

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## FACSIMILE TRANSMITTAL LETTER

Following please find a(n) 2 page Request to Withdraw Finality of Outstanding Action; 7 page Supplemental Response to Office Action; and 1 page Facsimile Transmittal Letter.

With respect to fees:    ☐ No additional fee is believed to be required  
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## Conditional Petition

If any extension of time for the accompanying response is required or if a petition for any other matter is required, applicant requests that this be considered a petition therefore.

If any additional fees associated with this communication are required and have not otherwise been paid, please charge the additional fees to Deposit Account No. 22-0350. Please credit overpayment associated with this communication to the Deposit Account No. 22-0350.

Respectfully submitted,  
VIDAS, ARRETT & STEINKRAUS

Date: March 22, 2006By: 

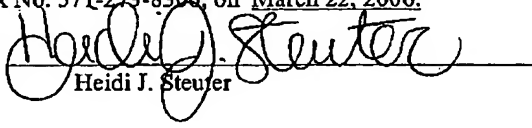
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P.O. Box 1450  
Alexandria, VA 22313-1450

Docket No.: S63.2B-10865-US01

## REQUEST TO WITHDRAW FINALITY OF OUTSTANDING ACTION

Applicant requests the Examiner withdraw the finality of the Office Action dated December 27, 2005.

The December 27, 2005 action asserts that the applicant's submission of an information disclosure statement "with the fee set forth in 37 CFR 1.17(p) on 9/16/2005" prompted the new grounds of rejection presented in the Office Action and accordingly the action was made final. This is a misstatement of the facts. The IDS filed 9/16/2005 was filed as a non-fee IDS. It included a certification under 1.95(e)(1).

The Final status imposed in the December 27, 2005 violates the Official policy of the USPTO as set forth in the MPEP and should be withdrawn.

MPEP 706.07(a) states:

Under present practice, second or any subsequent actions on the merits shall be final, *except* where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

(Emphasis added)

The December 27, 2005 action introduced new grounds of rejection relying on the Boer et al patent, US 6,355,358. These grounds were not necessitated by any amendment made by the

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*Attorney Docket No. S63.2B-10865-US01*

applicant. Further, contrary to the assertion in the Official Action, the new grounds were *not* based on information submitted in an IDS submitted with the fee 37 CFR 1.17(p). Therefore the exception stated in MPEP 706.07(a) is clearly applicable to the action mailed December 27, 2005.

MPEP 706.07(d) states:

If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection. The finality of the Office action must be withdrawn while the application is still pending. The examiner cannot vacate the final rejection once the application is abandoned."

It is submitted that the applicant has demonstrated that finality is premature in this case and accordingly should be withdrawn in accordance with the instruction of MPEP 706.07(d).

In the event that this request requires the payment of government fees and payment is not enclosed, please charge Deposit Account No. 22-0350.

Respectfully submitted,  
VIDAS, ARRETT & STEINKRAUS

Date: March 22, 2006

By: 

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